NATION

Judge rules ban on homosexuals serving in military is justified

Ex-midshipman to appeal decision

G.T. 12-10-91

Associated Press

WASHINGTON — A federal judge Monday upheld the Pentagon ban on homosexuals in the military, saying the armed forces must have that power if they are to protect soldiers and sailors from AIDS.

Joseph Steffan, a U.S. Naval Academy midshipman who acknowledged he was gay, had challenged the Defense Department policy as unconstitutional. But U.S. District Judge Oliver Gasch ruled that the regulations "rationally further legitimate state purposes."

The policy promotes "the maintenance of discipline, morale, good order, a respected system of rank and command, a healthy military force, morality and respect for the privacy interests of both officers and the enlisted," the judge ruled.

Steffan will appeal Gasch's ruling to the U.S. Court of Appeals, said Paula Ettelbrick, legal director of the Lambda Legal Defense and Education Fund in New York. The fund is a gay rights group representing the former midshipman.

"We find the decision distressing but not a big surprise," Ettelbrick said.

In the spring, Gasch referred to Steffan as a "homo" three times during a hearing. Gasch ruled that the fact that he used the word did not mean he was biased, and an appellate court upheld his decision.

Steffan resigned from the Naval Academy in May 1987, six weeks before graduation, after academy officials said he would not be allowed to graduate. He had disclosed days earlier that he was homosexual.

Steffan argued in his lawsuit that the Pentagon ban violated the constitutional right to equal protection.

But Gasch disagreed, saying the Pentagon policy is aimed in part "at preventing those who are at the greatest risk of dying of AIDS from serving in the Navy and the other armed services."

There was no evidence in Steffan's case that he had had sex relations with anybody, male or female.

But "implicit in the power to support armies is the power to make rules concerning their health and welfare," Gasch said.

"The power to protect the armed forces from venereal disease is ample to sustain the power to protect them from what is now known to be a fatal and incurable virus, the HIV," the judge said.

Steffan was a midshipman in good standing when he learned that he was under investigation by the Naval Investigative Service.

He admitted his homosexuality to an academy chaplain. The commandant of the academy then said graduation would not be possible because of regulations adopted in 1981 prohibiting homosexuals in the armed forces.